

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FERNANDO'S AUTO REPAIR,

Plaintiff and Appellant,

v.

BUREAU OF AUTOMOTIVE REPAIR et al.,

Defendants and Respondents.

A134771

(Marin County
Super. Ct. No. CIV-1105965)

Fernando's Auto Repair (Fernando)¹ appeals from the denial of its petition for a writ of mandate against the Bureau of Automotive Repair and Sherry Mehl as the chief of the Bureau (collectively, the Bureau). Having requested and received supplemental briefs from the parties concerning the potential mootness of the appeal, we shall now dismiss the appeal as moot.

Fernando's petition seeks to set aside the Bureau's revocation of its Gold Shield certificate, a certification issued pursuant to Health and Safety Code section 44014.2 authorizing a licensed smog check station such as Fernando to perform additional repair work on vehicles failing an emissions test. Fernando alleges that the certificate was improperly revoked without a formal administrative hearing, although a formal hearing had previously been conducted sustaining the two citations for improper smog inspections upon which the revocation was based. Fernando prayed for a writ of mandate

¹ At various places in the record, Fernando's Test Only, Jose L. Mazariegos, and Einar H. Dale are also referred to as the petitioning party.

vacating the revocation order, thereby reinstating his Gold Shield certificate. The trial court order denying the petition was entered on February 15, 2012.

During the pendency of this appeal, on December 31, 2012, the Gold Shield Program expired. (Cal. Code Regs., tit. 16, § 3392.1.) As of January 1, 2013, the Bureau adopted a new smog check certification program, referred to as the STAR program. (Cal. Code Regs., tit. 16, § 3392.3.1.) Previous certification under the former Gold Star Program is no longer of any significance. Licensed smog check stations must submit a new application for admission to the STAR program, which operates under new and different rules and regulations. Thus, were Fernando to prevail on this appeal by establishing that its Gold Shield certification was improperly revoked, the court could grant no effective relief because the Gold Shield program no longer exists and reinstating his certification under that program is now an impossibility. As Fernando itself acknowledges, “the actual Gold Shield Certificate is, at this date, worthless.”

It is well established that “an action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal would be without practical effect, and the appeal will therefore be dismissed.” (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 749, p. 814; *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214.) This rule is fully applicable if the issue on appeal has been rendered moot by intervening repeal or modification of legislation or administrative regulations. (9 Witkin, *supra*, Appeal, § 754, 820-821; *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 133-134.)

Fernando suggests that the matter is not moot because it might be entitled to the recovery of costs or “damages” were it to establish that its certificate was wrongly revoked. (See Gov. Code, § 800; Code Civ. Proc., §§ 1028.5, 1095.) That possibility, however, does not render the otherwise moot claim justiciable. “[I]t is settled that an appeal will not be retained solely to decide the question of liability for costs.” (*Paul v. Milk Depots, Inc.*, *supra*, 62 Cal.2d at p. 134.) Indeed, as provided in Government Code

section 800, which Fernando cites, “This section is ancillary only, and shall not be construed to create a new cause of action.” (Gov. Code, § 800, subd. (b).)

Nor is there merit in Fernando’s suggestion that despite mootness we nonetheless decide the issue “because it is likely that the very same controversy between the parties is likely to occur in the nuances of arguments about the rights afforded in re the STAR certification.” The regulatory provisions governing the STAR program, specifically including those governing the right to an administrative hearing, are significantly different from those that applied to the Gold Shield program. Resolution of the issue raised in this appeal would not be likely to have any significance in future situations.

For these reasons, the appeal is hereby dismissed. Parties are to bear their respective costs on appeal.

Pollak, J.

We concur:

McGuinness, P. J.

Siggins, J.